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1 UNITED STATES DISTRICT COURT
2 EASTERN DISTRICT OF NEW YORK

3 - - - - -X
4 UNITED STATES OF AMERICA, : 15-CR-00637 (KAM)
5 Plaintiff, :
6 -against- : United States Courthouse
7 EVAN GREEBEL, : Brooklyn, New York
8 Defendant. : Wednesday, December 27, 2017
9 : 9:00 a.m.
10 - - - - -X

11 TRANSCRIPT OF CRIMINAL CAUSE FOR JURY TRIAL
12 BEFORE THE HONORABLE KIYO A. MATSUMOTO
13 UNITED STATES DISTRICT JUDGE
14 BEFORE A JURY

15 A P P E A R A N C E S:

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Proceedings recorded by Stenographic machine shorthand,
transcript produced by Computer-Assisted Transcription.

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1 (In open court; outside the presence of the jury
2 at 9:07 a.m.)

3 THE COURT: Good morning. Is there anything that
4 I need to address?

5 (No audible response.)

6 THE COURT: All right. For the court reporter,
7 just note on the record that all jurors are here and the
8 parties were informed and we will keep you informed.

9 MR. BRODSKY: Thank you, Your Honor.

10 (Recess taken.)

11 THE COURT: All right. We have a juror note that
12 we have marked as Court Exhibit Number 10. I note for the
13 record that counsel and Mr. Greebel are here.

14 (Court's Exhibit Number 10 so marked and received
15 in evidence.)

16 THE COURT: The note reads: We appear to be
17 missing Government's Exhibits between 102-16 and 112-1.

18 And second request is: Is it possible to get a
19 transcript of the Government's and the Defense's closing
20 summations with the understanding that they are arguments
21 not evidence? Signed Juror Number 5.

22 So I would ask the parties to confer regarding
23 these exhibits. It appears that there is a volume that we
24 have that includes Government's Exhibits 103-1 through
25 111-48.

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1 MS. SMITH: It's probably in one binder.

2 THE COURT: It is not in the pile.

3 MS. SMITH: If Your Honor has the binder, it may
4 be that we can check it and send it back to the jury, and
5 then we can replace Your Honor's exhibits.

6 THE COURT: Okay.

7 MS. SMITH: Does that make sense?

8 THE COURT: Well, hopefully I have not marked on
9 it.

10 And if you would just check the list to make sure
11 those exhibits are, in fact, admitted.

12 MS. SMITH: Yes.

13 THE COURT: There might be some that are not.

14 MS. SMITH: This one should be...

15 (Pause in proceedings.)

16 THE COURT: Are the parties ready to send the
17 exhibits back to the jury?

18 MS. SMITH: Yes.

19 There is one exhibit on the list that was not
20 admitted, and so it should come off the list as well.

21 THE COURT: What exhibit is that?

22 MS. SMITH: Government's Exhibit 103-63.

23 THE COURT: 103-63?

24 MS. SMITH: 103-63.

25 THE COURT: Okay.

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1 MS. SMITH: And it was shown to refresh but was
2 not admitted, which is at Transcript Page 3896. It wasn't
3 actually in the binder, but I have a note there that it was
4 not admitted.

5 We can provide the Court with a version that --
6 with a list that does not have that exhibit on it. But for
7 now, they can just know that that is an exhibit that was not
8 admitted.

9 (Pause in proceedings.)

10 THE COURT: All right. So I have a note that I
11 would send back to the jurors. I will advise them that the
12 binder contains the requested exhibits as being provided but
13 not Government's Exhibit 103-63, which was not admitted in
14 evidence.

15 MS. SMITH: Right.

16 THE COURT: And then with regard to the
17 summations, I am just disinclined to provide the summations.
18 We have told them it is not evidence and I don't think it
19 would be appropriate to provide them with anything that is
20 not evidence.

21 Okay. Are the parties in any disagreement with
22 that?

23 MR. BRODSKY: Your Honor, our understanding is
24 that the Government takes the position that they should not
25 go back. We take the position that the jury has clearly

1 said they understand that they are arguments and they are
2 not evidence. And given their clear understanding that
3 they're argument and not evidence, we would ask the Court to
4 send them what they have requested, which is the transcripts
5 of the summations by both parties.

6 THE COURT: Well, I think it is highly irregular.
7 I do not think that it is appropriate for the jury to have
8 in the jury room documents of any nature that are not in
9 evidence. I think that when we had a sidebar following a
10 break -- or during a break, I believe it was during the
11 Government's rebuttal, there was an objection to something
12 that the prosecutor said, and I made a statement at that
13 point, as I recall correctly, that this is the first time
14 the jury would hear it, the only time the jury would hear
15 it, and this is argument and they would be given an
16 instruction, which they were, and they would not be
17 revisiting the statement that was objected to. So I don't
18 think that it would be appropriate, frankly, to give them
19 the transcript of the argument.

20 I understand that the argument is somewhat of a
21 summation of the evidence and there were references to
22 exhibits during the arguments, but I just think that, again,
23 it would not be appropriate. I mean, I can look at some
24 case law on this, but I am feeling very uncomfortable with
25 the notion that we would give the jury something for their

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1 consideration that was not evidence. But I can look at it
2 over the next 10 to 15 minutes to see. However, I am
3 disinclined to give them the summations for the reasons
4 stated.

5 MR. BRODSKY: Understood, Your Honor. I'm not
6 aware of any rule or --

7 THE COURT: Well, the jury --

8 MR. BRODSKY: -- that precludes it.

9 THE COURT: Okay.

10 MR. BRODSKY: But we will do a little searching
11 ourselves.

12 THE COURT: Yes. The jury basically should not
13 have in the jury room documents that are not evidence. They
14 have got instructions that are instructions on the law.
15 Although in the past, jurors were given in many cases the
16 indictment, which they have been told, you know, was not
17 evidence, you know, in the charge. We did not give the
18 jurors the indictment, and I am not -- I am just trying to
19 think what else they might have there other than the
20 instructions.

21 MR. BRODSKY: I think Your Honor put your finger
22 on --

23 THE COURT: Right.

24 MR. BRODSKY: -- a document which, obviously, we
25 have all agreed to is not going to go back --

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1 THE COURT: Right.

2 MR. BRODSKY: -- and has not gone back to the jury
3 in this whole case. But I think Your Honor put her finger
4 on an example of a document that does, as a regular
5 practice, go back to the jury.

6 THE COURT: Right.

7 MR. BRODSKY: And it is not evidence but judges
8 often allow it. In this case, obviously, the parties have
9 already agreed that it is not going back, which is the
10 indictment. I think that suggests that there is no rule or
11 practice precluding it. I generally believe that if the
12 jury requests something and there is no rule or practice
13 that precludes it, there is really no harm for it going back
14 to the jury with their understanding that it is not the
15 evidence but rather arguments of counsel.

16 THE COURT: Well, you know, the argument, as you
17 know, spans over three days. There are hundreds of pages.
18 I do not know how we are going to assemble and copy the
19 transcript. I suppose it falls on us to do it, but
20 obviously there were sidebars between and arguments between
21 the counsel about statements that were made during closing
22 that would have to be extracted. I believe the court
23 reporters try to segregate those types of arguments from the
24 rest of the transcript, but I would say that if you come up
25 with a case in the circuit that says it is appropriate, I

1 will certainly give it consideration. We are going to look
2 ourselves, but I am disinclined to send the summations back.

3 If we do that, we have to be really careful to go
4 through hundreds of pages of the arguments over the course
5 of three days to extract the sidebars or anything else that
6 might have, you know, been said out of the jurors' presence.

7 MR. BRODSKY: Understood, Your Honor.

8 My understanding is -- and yes, you are
9 100 percent correct, Your Honor, that summations occurred,
10 thankfully with the Court's allowance, over a number of
11 days, and we do appreciate that. I think that there were no
12 objections during each summation of the parties. There were
13 a few sidebars during jury breaks, which I believe are
14 easily excisable from the transcript. There were not that
15 many, and it would be easy to excise those pages. We would
16 be happy to bear the burden of making copies of whatever
17 kind the Court wanted, whatever number the Court wants.

18 MS. SMITH: Your Honor, it is the Government's
19 position that for the reasons that you stated that it is not
20 appropriate. And the reason the indictment goes back is
21 that it is a statement of the charges against the defendant,
22 and it is obviously within the Court's discretion not to
23 send that back as well. And so given that it is argument
24 and not evidence, it is the Government's position that it is
25 not appropriate. We are happy to look at any case law that

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1 the defense comes up with to suggest that it might be
2 appropriate.

3 I believe there was one objection during the
4 defense's summation and then, obviously, sidebar during the
5 lunch breaks and everything else, would have to come out if
6 it were to go back. But given that it is, in fact,
7 argument, it would not be appropriate.

8 THE COURT: All right. Well, why don't we do
9 this: I will send back the exhibits with the exception of
10 Government's Exhibit -- for the record,
11 Government's Exhibit 103-63, and I will write that in a note
12 back to the jurors. And I will reserve on the transcript
13 until, you know, you let me know that you are ready to be
14 heard and we will do our own research as well.

15 MR. BRODSKY: Thank you.

16 THE COURT: So I will mark as Court's Exhibit
17 10-A.

18 (Court's Exhibit Number 10-A so marked and
19 received in evidence.)

20 THE COURT: With regard to the transcript request
21 for argument, I will say that the request is under
22 consideration, all right?

23 MR. DUBIN: Your Honor, is it possible for us to
24 get a copy of the note you are sending back?

25 THE COURT: I am making copies right now.

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1 MR. DUBIN: Oh, thank you, Your Honor. I
2 appreciate it.

3 THE COURT: All right. We have to go upstairs to
4 do that.

5 (Pause in proceedings.)

6 THE COURT: We will be back. All right. We will
7 be back in a few minutes. I think it is easier just to do
8 this upstairs.

9 (Pause in proceedings.)

10 THE COURT: I wanted to address the jurors'
11 request for transcript of the summations. I am happy to
12 hear from the parties if they have looked at any cases.

13 The most on-point case that I found was
14 ***United States versus Arboleda, A-R-B-O-L-E-D-A, 20 F.3 58***
15 decided in 1994 where the Second Circuit reversed a
16 conviction because the District Court had granted the
17 jurors' request for a readback of the prosecutor's rebuttal
18 summation. And even though it was only, you know, the
19 rebuttal that got read back, the Court seemed troubled first
20 by the one-sided nature of it, but also by the notion that
21 the jurors were not instructed that the summations were not
22 evidence and the influence that the summations may have on
23 the jurors' deliberations.

24 And I think, although it is not directly on point,
25 the undue weight that the jury may gave to the summations is

1 I think enhanced. If we send the transcripts back, the
2 jurors may be focused only on the evidence that each side
3 had focused on and would not be charged -- or would not
4 necessarily fulfill their duty to weigh all of the evidence
5 in the record and to give that evidence their own weight and
6 decide, you know, whether it is going to be important to the
7 deliberations.

8 So my concern is that we not provide the
9 summations. It is multiple, hundreds of pages long, and
10 although, it might be a good guide to the jurors in some
11 ways, I think that we run the risk that the jurors would be
12 tempted to abdicate some their responsibility to look fully
13 at the record before them and to give the evidence
14 independent consideration free of the arguments of counsel.

15 If there is a case that either side wants to bring
16 to my attention, I will be happy to look at that as well,
17 but that is my inclination.

18 MR. BRODSKY: Thank you, Your Honor. We did not
19 find a case on point in the Second Circuit addressing the
20 issue. And so thank you for considering our request,
21 Your Honor.

22 THE COURT: All right. I do think that we did
23 find another case where a summary chart -- not summary
24 charts, but demonstratives were sent back, and the Court was
25 also very hesitant that the jury might give those charts

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1 more weight than they should. So I think the safer thing to
2 do is to just advise the jurors that they are to decide the
3 case based on the evidence in the record, and that I will
4 just remind them that, although they acknowledge that the
5 summations are not evidence, we just ask that they focus on
6 the trial record. And I will give you a copy of the note
7 that I send back --

8 MR. BRODSKY: Your Honor --

9 THE COURT: -- and I am happy to consider any
10 language you would like.

11 MR. BRODSKY: Yes. I don't necessarily think that
12 we need to tell them not to focus on the summations. They
13 heard the summations. Some of them may have taken notes and
14 may have been persuaded by some arguments, so they should be
15 able to consider the arguments.

16 I think maybe the best thing to do is just simple
17 write a light note to say we will not be providing -- we
18 appreciate the request, but we will not be providing
19 transcripts of the summations, without weighing in on or
20 whether or not what they should be focusing on.

21 THE COURT: Does the Government have anything to
22 add?

23 MS. SMITH: No, Your Honor. The *Arboleda* case was
24 the case that we had also found, and I had a number of
25 recent cases in this district, including the *Lange* case,

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1 which is **10-CR-968**; and the **Asaro** case, which is **14-CR-26**
2 where similar notes were sent out and both
3 Chief Judge Irizarry and Chief Judge Ross instructed the
4 jury that they would not be receiving transcripts because
5 arguments are not evidence. So I think language along those
6 lines -- again, I agree with Mr. Brodsky. I don't think we
7 need to say that they can't consider counsels' arguments
8 because they can --

9 THE COURT: No, I would not say that.

10 MS. SMITH: Right. But I think just something
11 along the lines of, Because they are not, in fact, evidence,
12 they won't receive the transcripts.

13 THE COURT: Well, all right. I'm proposing the
14 Court respectfully declines to provide the jury with
15 transcripts of the parties' summations which were not
16 evidence, and leave it at that.

17 MR. BRODSKY: Your Honor, I think if you add the
18 language, which are not evidence which the jury has already
19 said in their note -- the jury has already said they
20 understand in their question that they are not evidence.
21 What I fear is any note from the Court that says they're not
22 evidence will emphasize to the jury or will send the wrong
23 message that they should discount them. So I would prefer
24 to just say, you know, we respectfully -- the Court
25 respectfully declines to provide the transcripts, and leave

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1 it at that.

2 THE COURT: All right.

3 MR. BRODSKY: Thank you, Your Honor.

4 THE COURT: All right. I will make a copy of this
5 note for you and bring it back.

6 MR. BRODSKY: Thank you.

7 THE COURT: All right. We will call you if we
8 hear anything further.

9 MR. BRODSKY: Thank you, Your Honor.

10 MS. SMITH: Thank you, Your Honor.

11 MR. BRODSKY: Appreciate it.

12 (Pause in proceedings.)

13 THE COURT: All right. We have counsel and
14 Mr. Greebel present.

15 We have a note from the jurors, which is marked as
16 Court Exhibit Number 11.

17 (Court's Exhibit Number 11 so marked and received
18 in evidence.)

19 THE COURT: The note reads: The jury has reached
20 a verdict on each count. Signed Juror Number 5.

21 So I will gather the jurors in the courtroom. We
22 will also let the alternate jury sit in the courtroom as
23 well, since she wanted to be present when the verdict was
24 reached.

25 I would like to know whether the parties wish to

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1 have the jurors poled --

2 MR. BRODSKY: Yes.

3 THE COURT: -- when the verdict is read?

4 MR. BRODSKY: Yes.

5 MS. SMITH: Yes, Your Honor.

6 THE COURT: All right. We will do that.

7 So what we will do at this point, then, is to
8 bring the jurors in, and when they are seated I will take
9 the verdict sheet from the foreperson, okay?

10 Thank you.

11 (Pause in proceedings.)

12 MR. DUBIN: Your Honor, Mr. Greebel's mother and
13 father-in-law are just rushing back to the courtroom. I
14 think they are across the street. Can we wait a moment for
15 them?

16 THE COURT: Sure.

17 MR. DUBIN: Thank you.

18 THE COURT: Do you want us to hold the jurors from
19 coming into the courtroom?

20 MR. DUBIN: We're just trying to find out exactly
21 where they are.

22 THE COURT: Do you mind if we get them seated, or
23 do you want to have them step back into the jury room? We
24 can either hold them in the hallway or just have them have a
25 seat.

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1 MR. DUBIN: If you could hold them in the hallway
2 just for a moment and let us see if they are close.

3 THE COURT: Hold them.

4 I don't want them to run and fall or anything, so
5 we will just wait.

6 (Pause in proceedings.)

7 THE COURT: Mr. Brodsky, is everybody here?

8 MR. BRODSKY: Yes, Your Honor.

9 THE COURT: All right. We will bring the jury in,
10 then.

11 MR. BRODSKY: Thank you, Your Honor.

12 (Jury enters the courtroom at 2:19 p.m.)

13 (Jury present.)

14 THE COURT: All jurors are present. Please have a
15 seat.

16 We received the jurors' note back. The jury has
17 reached a verdict. I would like to ask who speaks for the
18 jury -- who is the jury foreman?

19 JUROR NUMBER 5: (Indicates.)

20 THE COURT: Juror Number 5?

21 JUROR NUMBER 5: I was 5.

22 THE COURT: Your name is Mr. Clasen?

23 JUROR NUMBER 5: Yes.

24 THE COURT: Sir, may we have the verdict sheet,
25 please.

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1 JUROR NUMBER 5: (Complies.)

2 THE COURT: Thank you.

3 Has the jury reached a unanimous verdict,
4 Mr. Clasen?

5 JUROR NUMBER 5: Yes.

6 THE COURT: All right. Thank you.

7 Jurors, I will now publish the verdict. We will
8 poll the jurors individually, which means that I will ask
9 each juror after the verdict is read whether the jury
10 verdict as published represents your own individual verdict
11 in all respects.

12 So I will now publish the verdict: As to Count 1,
13 Conspiracy to Commit Wire Fraud. On the charge of
14 conspiracy to commit wire fraud in Count 1, how do you
15 unanimously find the Defendant Evan Greebel?

16 Guilty.

17 As to Count 2, Conspiracy to Commit Securities
18 Fraud. On the charge of conspiracy to commit securities
19 fraud in Count 2, how do you unanimously find the
20 Defendant Evan Greebel?

21 Guilty.

22 Now let me start with Juror Number 1 and ask
23 whether the verdict as published constitutes your individual
24 verdict in all respects?

25 JUROR NUMBER 1: Yes, Your Honor.

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1 THE COURT: Juror Number 2?

2 JUROR NUMBER 2: Yes.

3 THE COURT: Juror Number 3?

4 JUROR NUMBER 3: Yes.

5 THE COURT: Juror Number 4?

6 JUROR NUMBER 4: (No audible response.)

7 THE COURT: Jury Number 4 is -- ma'am in the back
8 with the cap?

9 JUROR NUMBER 1: Yes.

10 THE COURT: Yes?

11 JUROR NUMBER 4: Yes.

12 THE COURT: Juror Number 5?

13 JUROR NUMBER 5: We had a number change -- well, I
14 was 5.

15 THE COURT: All right. Let me just -- I am going
16 to do this by seat.

17 JUROR NUMBER 5: Okay.

18 THE COURT: Okay. So the juror seated in Seat 1,
19 does this verdict represent your individual verdict in all
20 respects?

21 JUROR NUMBER 1: Yes, Your Honor.

22 THE COURT: The juror in Seat Number 2?

23 JUROR NUMBER 2: Yes.

24 THE COURT: The juror in Seat Number 3?

25 JUROR NUMBER 3: Yes.

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1 THE COURT: The juror in Seat Number 4? I have
2 allowed the jurors to sit out of order.

3 JUROR NUMBER 4: Yes.

4 THE COURT: The juror in Seat Number 5?

5 JUROR NUMBER 5: Yes.

6 THE COURT: The juror in Seat Number 6?

7 JUROR NUMBER 6: Yes.

8 THE COURT: The juror in Seat Number 7?

9 JUROR NUMBER 7: Yes.

10 THE COURT: The juror in Seat Number 8?

11 JUROR NUMBER 8: Yes, Your Honor.

12 THE COURT: And the juror in Seat Number 9?

13 JUROR NUMBER 9: Yes, Your Honor.

14 THE COURT: The juror in Seat Number 10?

15 JUROR NUMBER 10: Yes.

16 THE COURT: The juror in Seat Number 11?

17 JUROR NUMBER 11: Yes, Your Honor.

18 THE COURT: And the juror in Seat Number 12.

19 JUROR NUMBER 12: Yes.

20 THE COURT: All right. I will direct that the
21 clerk file and record the verdict.

22 I would like to thank the jurors again for your
23 service. You may return to the jury room and gather your
24 belongings. Please provide your jury cards to the court
25 security officer. You may go to the second floor clerk's

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1 office, the jury clerk's office and obtain your paperwork.

2 You will get your paperwork from the jury clerk.

3 I would like to thank you again for your service,
4 and I wish you all well. Thank you.

5 (Jury exits the courtroom at 2:23 p.m.)

6 (The following matters occurred outside the
7 presence of the jury.)

8 THE COURT: All right. Please have a seat.

9 Now I would think that the Government would not
10 object to continuing the condition and arrangements for
11 Mr. Greebel?

12 MS. SMITH: No, Your Honor.

13 THE COURT: And I would like to hear from the
14 Defense how they would like to schedule any post-trial
15 motions. I would like to set a schedule for those motions
16 if you would like to either renew or make any motions?

17 MR. BRODSKY: We would, Your Honor. We would ask
18 that --

19 THE COURT: Could you speak up, please.

20 MR. BRODSKY: Yes, Your Honor.

21 We would ask for about six weeks to file our
22 papers.

23 THE COURT: All right. Today is December the
24 27th. So six weeks from today would bring us to
25 February 7th.

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1 MR. BRODSKY: Yes, Your Honor.

2 THE COURT: All right.

3 And how much time would the Government like to
4 respond?

5 MS. SMITH: Just four weeks, Your Honor. So I
6 think March 7th would be fine.

7 THE COURT: All right.

8 All right. And would the Defense like to have an
9 opportunity for a reply?

10 MR. BRODSKY: Yes, Your Honor.

11 THE COURT: All right. How much time would you
12 like?

13 MR. BRODSKY: Two weeks, Your Honor.

14 THE COURT: All right. That would be March the
15 21st.

16 Would you like a copy of the verdict sheet,
17 Counsel? We can make a copy for you if you would like to
18 have one.

19 MS. SMITH: Yes, Your Honor.

20 THE COURT: All right. Would you hand a copy to
21 each party?

22 THE COURTROOM CLERK: (Complies.)

23 THE COURT: Thank you.

24 When the briefs are complete, we can talk about a
25 sentencing date. I would like to get a motion. Again, we

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1 can make sure that we have a date that would be workable for
2 all parties when the post-trial submissions are fully
3 submitted to the Court.

4 All right. We're adjourned.

5 MS. SMITH: Thank you, Your Honor.

6 THE COURT: Thank you very much.

7 (Matter concluded.)

8 --oo0oo--

11 I N D E X -

13 E X H I B I T S

14	Court's Exhibit Number 10	10978
15	Court's Exhibit Number 10-A	10985
16	Court's Exhibit Number 11	10990

23 I (we) certify that the foregoing is a correct transcript
24 from the record of proceedings in the above-entitled matter.

25 /s/ David R. Roy

DAVID R. ROY

December 27, 2017

Date